

CCRB INVESTIGATIVE RECOMMENDATION

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|--|-------------------------------------|--|---|---|---------------------------------|
| Investigator: Isabel Cifarelli | Team: Squad #13 | CCRB Case #: 202007144 | <input checked="" type="checkbox"/> Force | <input checked="" type="checkbox"/> Discourt. | <input type="checkbox"/> U.S. |
| | | | <input checked="" type="checkbox"/> Abuse | <input type="checkbox"/> O.L. | <input type="checkbox"/> Injury |
| Incident Date(s) Monday, 10/19/2020 10:00 PM | Location of Incident: § 87(2)(b) | Precinct: 84 | 18 Mo. SOL 4/19/2022 | EO SOL 5/4/2022 | |
| Date/Time CV Reported Mon, 10/26/2020 3:03 PM | CV Reported At: CCRB | How CV Reported: Call Processing System | Date/Time Received at CCRB Mon, 10/26/2020 3:03 PM | | |

| Complainant/Victim | Type | Home Address |
|--------------------|------------|--------------|
| § 87(2)(b) | § 87(2)(b) | § 87(2)(b) |
| § 87(2)(b) | § 87(2)(b) | § 87(2)(b) |
| § 87(2)(b) | § 87(2)(b) | § 87(2)(b) |
| § 87(2)(b) | § 87(2)(b) | § 87(2)(b) |

| Witness(es) | Home Address |
|-------------|--------------|
| § 87(2)(b) | § 87(2)(b) |

| Subject Officer(s) | Shield | TaxID | Command |
|---------------------------|--------|--------|---------|
| 1. SGT Ernest Diggs | 04473 | 948890 | 084 PCT |
| 2. POM Craig Schoelermann | 19383 | 962787 | 084 PCT |
| 3. POM Maxim Maloshag | 3036 | 956058 | 084 PCT |

| Witness Officer(s) | Shield No | Tax No | Cmd Name |
|-------------------------|-----------|--------|----------|
| 1. PO Dennis Ferrer | 02919 | 921334 | 084 PCT |
| 2. POF Stephanie Henman | 01635 | 964552 | 084 PCT |
| 3. POM Toby Lau | 11112 | 964607 | 084 PCT |

| Officer(s) | Allegation | Investigator Recommendation |
|--------------------------|--|-----------------------------|
| A.POM Craig Schoelermann | Abuse: Police Officer Craig Schoelermann entered § 87(2)(b) in Brooklyn. | § 87(2)(b) |
| B.SGT Ernest Diggs | Abuse: Sergeant Ernest Diggs entered § 87(2)(b) in Brooklyn. | § 87(2)(b) |
| C.SGT Ernest Diggs | Abuse: Sergeant Ernest Diggs searched § 87(2)(b) in Brooklyn. | § 87(2)(b) |
| D.POM Craig Schoelermann | Abuse: Police Officer Craig Schoelermann threatened to arrest § 87(2)(b) | § 87(2)(b) |
| E.POM Craig Schoelermann | Abuse: Police Officer Craig Schoelermann threatened to arrest § 87(2)(b) | § 87(2)(b) |
| F.POM Maxim Maloshag | Abuse: Police Officer Maxim Maloshag threatened to arrest § 87(2)(b) | § 87(2)(b) |
| G.POM Maxim Maloshag | Force: Police Officer Maxim Maloshag used physical force against § 87(2)(b) | § 87(2)(b) |
| H.POM Maxim Maloshag | Discourtesy: Police Officer Maxim Maloshag gestured discourteously toward § 87(2)(b) | § 87(2)(b) |
| I.SGT Ernest Diggs | Abuse: Sergeant Ernest Diggs failed to provide § 87(2)(b) with a business card. | § 87(2)(b) |

| Officer(s) | Allegation | Investigator Recommendation |
|-----------------------|---|-----------------------------|
| J.SGT Ernest Diggs | Abuse: Sergeant Ernest Diggs failed to provide § 87(2)(b) with a business card. | |
| § 87(2)(g), § 87(4-b) | | |

Case Summary

On October 26, 2020, § 87(2)(b) filed this complaint via the CCRB's call processing system on behalf of himself, his wife, § 87(2)(b) and his mother-in-law, § 87(2)(b).

On October 19, 2020, at approximately 9:25p.m., § 87(2)(b) and § 87(2)(b) returned to § 87(2)(b) apartment, located at § 87(2)(b) in Brooklyn. While § 87(2)(b) the owner of the apartment, was away in Florida for the previous month, she had allowed the woman who cleans her apartment, § 87(2)(b) to stay in the apartment, giving her the only key. While § 87(2)(b) was away, § 87(2)(b) allowed her son, § 87(2)(b) to stay in the apartment with her. When § 87(2)(b) returned to the apartment, § 87(2)(b) who was inside, did not allow § 87(2)(b) inside. § 87(2)(b) called 911 and stated that there was a strange man in her house and she could not get in. Police Officer Craig Schoelermann, Police Officer Maxim Maloshag, Police Officer Dennis Ferrer, and Sergeant Ernest Diggs, all of the 84th Precinct, responded to the scene.

After speaking briefly in the hallway with § 87(2)(b) and § 87(2)(b) all four officers knocked on the front door, spoke briefly with § 87(2)(b) and entered the apartment (**Allegations A and B: Abuse of Authority, § 87(2)(g)**). While inside the apartment, all four officers searched the bedrooms and bathrooms (**Allegation C: Abuse of Authority, § 87(2)(g)**). Officers learned from § 87(2)(b) that § 87(2)(b) had been staying there for over 30 days, so they exited the apartment and informed § 87(2)(b) and § 87(2)(b) that they could not make § 87(2)(b) leave. § 87(2)(b) stated that they needed to change the locks, but that they would provide § 87(2)(b) with the new key, and PO Schoelermann responded that if they changed the locks, they could be arrested for an illegal eviction (**Allegation D: Abuse of Authority, § 87(2)(g)**). While on scene, PO Maloshag and PO Schoelermann both told § 87(2)(b) that he would be arrested if he changed the locks (**Allegation E and F: Abuse of Authority, § 87(2)(g)**). PO Maloshag allegedly bumped his shoulder against § 87(2)(b) shoulder in the hallway of the building (**Allegation G: Force, § 87(2)(g)**). In the lobby of the building, PO Maloshag allegedly raised both middle fingers at § 87(2)(b) (**Allegation H: Discourtesy, § 87(2)(g)**). After the officers searched the apartment, Sgt. Diggs did not offer a business card to any civilian on scene (**Allegations I and J: Abuse of Authority, § 87(2)(g)**). § 87(2)(g), § 87(2)(g), § 87(2)(g).

No arrest or summons resulted from this incident.

The investigation obtained eight body-worn camera ("BWC") videos related to this incident, recorded by PO Schoelermann, PO Maloshag, PO Ferrer, Sgt. Diggs, and Police Officer Stephanie Henman and Police Officer Toby Lau, also of the 84th Precinct. The videos are in IAs # 32-39 (BR 01-08) and summarized in IAs # 82-89 (BR 09-16).

Findings and Recommendations

Allegation (A) Abuse of Authority: Police Officer Craig Schoelermann entered § 87(2)(b) in Brooklyn.

Allegation (B) Abuse of Authority: Sergeant Ernest Diggs entered § 87(2)(b) in Brooklyn.

Allegation (C) Abuse of Authority: Sergeant Ernest Diggs searched § 87(2)(b) in Brooklyn.

§ 87(2)(b) testified that on September 17, 2020, just before § 87(2)(b) was about to leave for Florida, § 87(2)(b) told her that she had nowhere to stay (BR 17). § 87(2)(b) told § 87(2)(b) she could stay at § 87(2)(b) apartment while she was away. § 87(2)(b) gave § 87(2)(b) \$600 for rent, and § 87(2)(b) gave her a receipt and her only key to the apartment. On October 18, 2020, § 87(2)(b) heard from the security guard in her building that there was a man staying at

the apartment. She called § 87(2)(b) who told her that the man was her son, and § 87(2)(b) asked her to move out and give the keys to § 87(2)(b) which § 87(2)(b) stated she would not do. § 87(2)(b) then flew to New York, and on October 19, 2020, she went to the apartment with § 87(2)(b) and § 87(2)(b). On the way to the apartment, she called 911 and stated that there was a strange man in her apartment and that she wanted him to leave. PO Schoelermann, PO Maloshag, PO Ferrer, and Sgt. Diggs responded to the scene and PO Schoelermann and PO Maloshag entered the apartment while § 87(2)(b) spoke to the remaining officers in the hallway.

Neither § 87(2)(b) nor § 87(2)(b) observed what the officers did inside the apartment (**BR 18-19**). § 87(2)(b) and § 87(2)(b) who was not present in person during this incident, were uncooperative with the investigation, and § 87(2)(b) was unavailable to the investigation (see IAs for contact attempts).

Sgt. Diggs' BWC footage, from the 02:39 to 03:11 minute marks of the media player timestamp (visible at the bottom of the screen), shows the officers in the § 87(2)(b) floor hallway of § 87(2)(b) (**BR 01**). § 87(2)(b) explains that § 87(2)(b) had allowed a woman to stay, the woman brought a strange man into the apartment, and now they were not letting § 87(2)(b) back in. PO Maloshag's BWC footage, from the 03:36 to 03:45 minute marks of the media player timestamp (visible at the bottom of the screen), shows PO Ferrer and PO Schoelermann standing at the door to § 87(2)(b) as § 87(2)(b) opens the door to the apartment (**BR 03**). PO Schoelermann's BWC footage, from the 03:57 to 04:03 minute marks shows § 87(2)(b) standing in front of the open door, pointing inside the apartment toward § 87(2)(b) and stating, "I don't know this man, I want him out of my house now" (**BR 02**). From the 04:10 to 05:14 marks, § 87(2)(b) asks if he can go get a face mask, PO Schoelermann asks who else is inside the apartment, § 87(2)(b) motions with his hand for PO Schoelermann to come inside and states no one else is there, and PO Schoelermann steps into the apartment and follows § 87(2)(b) into a bedroom in the apartment while § 87(2)(b) gets a face mask.

Sgt. Diggs' BWC footage from the 05:17 to 06:18 minute marks shows PO Ferrer and Sgt. Diggs walking into the apartment. PO Ferrer knocks on a door within the apartment, and asks who is in the room. § 87(2)(b) can be heard stating that no one else is in there. PO Ferrer opens the door and steps inside. Sgt. Diggs shines a flashlight toward PO Ferrer, then leans into the bathroom, briefly shining his flashlight inside. He then walks down the hallway, opens the door to another bathroom and shines his flashlight inside, opens an additional door next to the bathroom and steps into a bedroom, shining his flashlight around the bedroom for approximately nine seconds before leaving the room. At the 5:35 minute mark, § 87(2)(b) can be heard stating, "You guys can check, there's no one here." From the 06:21 to 06:43 minute marks, Sgt. Diggs walks into the kitchen/living room area and walks through the living room, shining his flashlight onto the balcony. PO Maloshag's BWC footage from the 09:05 to 10:18 minute marks shows PO Ferrer on the phone with § 87(2)(b) telling PO Maloshag that § 87(2)(b) stated she has been in the apartment for over 30 days, and has receipts in her room that show this. PO Ferrer hands the phone to § 87(2)(b) who walks into a bedroom, followed by PO Maloshag. PO Maloshag stands in the bedroom with § 87(2)(b) and shines his flashlight at him while § 87(2)(b) searches for the receipts. No BWC footage shows officers requesting consent to enter or search the apartment.

PO Maloshag testified that he entered the apartment because he asked § 87(2)(b) about the key, and her response indicated to PO Maloshag that although she did not have the key, she would have allowed him into the apartment (**BR 20**). He also believed that § 87(2)(b) had implied that he could come in. PO Schoelermann testified that after § 87(2)(b) asked if he could obtain a face mask and began walking toward the rear bedroom, he followed § 87(2)(b) into the apartment to make sure he was not getting a weapon and to make sure no one else was in the apartment (**BR 21**). Sgt. Diggs testified that he entered and searched the apartment in order to find § 87(2)(b) as he could not determine whether the incident was still a burglary in progress without speaking to her (**BR 22**). Upon reviewing his BWC footage, Sgt. Diggs testified that he did not ask permission to enter and search the bedrooms for § 87(2)(b) because § 87(2)(b) had waved him

PO Schoelermann did not initially recall whether he stated he would arrest any civilian. After reviewing his BWC footage, he stated that he was telling § 87(2)(b) and § 87(2)(b) that they would only be arrested if they did not provide a key to § 87(2)(b). He did not intend this statement as a threat of arrest, his intention was to advise § 87(2)(b) that she could be arrested if she did not provide § 87(2)(b) a key.

NYC Administrative Code 26-521 states that it is unlawful for any person to evict or attempt to evict an occupant of a dwelling who has lawfully occupied the dwelling unit for thirty consecutive days or longer by changing the lock on an entrance door without supplying the occupant with a key (BR 25).

Given that § 87(2)(b) stated twice to PO Schoelermann that she was planning to give § 87(2)(b) a copy of the new key once the locks were changed, the investigation determined that § 87(2)(b) was not doing anything for which she could have been arrested nor stating her intent to do anything for which she could have been arrested. Although PO Schoelermann testified that he clarified to § 87(2)(b) that she would only be arrested for changing the locks if she did not provide § 87(2)(b) a key, the investigation determined based on the BWC footage that PO Schoelermann only stated that § 87(2)(b) would be arrested for changing the locks. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Allegation (E) Abuse of Authority: Police Officer Craig Schoelermann threatened to arrest

§ 87(2)(b)

Allegation (F) Abuse of Authority: Police Officer Maxim Maloshag threatened to arrest

§ 87(2)(b)

Allegation (G) Force: Police Officer Maxim Maloshag used physical force against § 87(2)(b)

§ 87(2)(b)

Allegation (H) Discourtesy: Police Officer Maxim Maloshag gestured discourteously toward

§ 87(2)(b)

§ 87(2)(b) testified that PO Schoelermann told him that if he called a locksmith, he would “lock [him] up.” PO Schoelermann did not say why § 87(2)(b) could be arrested for this and had not previously said § 87(2)(b) could not change the locks. § 87(2)(b) explained that § 87(2)(b) did not have a key to her apartment. PO Schoelermann repeated that he would “lock § 87(2)(b) up” if he changed the locks. § 87(2)(b) walked away toward the apartment. As § 87(2)(b) walked toward the apartment, he felt a hard brush against his shoulder. He believed PO Maloshag intentionally bumped into him. The officers left and went to the lobby of the building. § 87(2)(b) called a locksmith, and when the locksmith arrived and was in the lobby of the building, one or both of PO Schoelermann and PO Maloshag, who were also in the lobby, spoke to § 87(2)(b) who was still on the § 87(2)(b) floor of the building, on the locksmith’s phone and stated, “I told you, if you change the locks, I’m going to come up there and lock you up.” § 87(2)(b) walked downstairs to the lobby and spoke to the officers, at which point PO Maloshag held up two middle fingers at § 87(2)(b).

§ 87(2)(b) testified that she observed several threats of arrest made against § 87(2)(b) but she was not present when the alleged force and discourteous gestures occurred.

Both PO Schoelermann’s and PO Maloshag’s BWC videos start in the officers’ patrol vehicle and end in the § 87(2)(b)-floor hallway of § 87(2)(b) (BR 02-03). No BWC video recorded by any officer on scene captures the alleged threats of arrest, force, or gestures. It is unclear from the BWC footage if any interaction took place between officers and civilians after the officers stopped recording.

PO Maloshag did not recall whether he ever stated that civilians on scene could be arrested for calling a locksmith or changing the locks, and he did not recall whether any other officer made

such a statement, either in person or on the phone. He did not believe that any officer made physical contact with any civilians on scene. PO Maloshag stated that the hallway was pretty tight, but he did not ever bump his shoulder into § 87(2)(b). He did not believe he personally made any physical contact with civilians, and he definitely did not intentionally make any physical contact with civilians. He did not recall whether he interacted with any civilians in the lobby other than possibly § 87(2)(b). He did not recall whether he made any nonverbal hand gestures toward § 87(2)(b). He may have spoken with his hands and moved them up and down, but he did not make any intentional gestures. He did not ever raise his middle fingers at § 87(2)(b).

As mentioned above, PO Schoelermann did not initially recall stating that any civilian would be arrested. Upon reviewing his BWC footage, he did not recall making any additional statements regarding civilians potentially being arrested. No other officers interviewed recalled observing the alleged threats of arrest, force, or discourteous gestures.

§ 87(2)(g)

Allegation (I) Abuse of Authority: Sergeant Ernest Diggs failed to provide § 87(2)(b) with a business card.

Allegation (J) Abuse of Authority: Sergeant Ernest Diggs failed to provide § 87(2)(b) with a business card.

It is undisputed that no arrest or summons resulted from this incident. As mentioned above, the investigation determined that Sgt. Diggs searched the apartment, an area over which § 87(2)(b) and § 87(2)(b) both maintained a reasonable expectation of privacy. The BWC footage does not capture any officer offering a business card to any civilian. Sgt. Diggs was not aware of any officer providing business cards to any civilians, and he did not personally provide one because he was not in the unit that initially responded to the scene.

NYC Administrative Code 14-174 states that officers must offer a business card to any individual with which they conduct a law enforcement activity, such as home searches, at the conclusion of any such activity that does not result in an arrest or summons (BR 26).

§ 87(2)(g)

§ 87(2)(g), § 87(4-b)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) § 87(2)(b) or § 87(2)(b) has been a party (BR 27-30).
- PO Schoelermann has been a member of service for five years and has been a subject in four additional CCRB complaints and six other allegations, none of which were substantiated. § 87(2)(g)
- Sgt. Diggs has been a member of service for 11 years and has been a subject in three

additional CCRB complaints and five other allegations, none of which were substantiated.

§ 87(2)(g)

- PO Maloshag, now a Sergeant, has been a member of service for eight years and has been a subject in 13 additional CCRB complaints and 23 other allegations, none of which were substantiated. § 87(2)(g)

Mediation, Civil, and Criminal Histories

- § 87(2)(b) and § 87(2)(b) declined to mediate this complaint.
- As of November 30, 2021, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regard to this incident (**BR 31**).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Squad: 13

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|---------------|-------------------------|------------------------------|-----------------|
| Investigator: | <u>Isabel Cifarelli</u> | <u>Inv. Isabel Cifarelli</u> | <u>03/18/22</u> |
| | Signature | Print Title & Name | Date |

| | | | |
|---------------|----------------------|-------------------------|-------------------|
| Squad Leader: | <u>Laura Kastner</u> | <u>IM Laura Kastner</u> | <u>03/18/2022</u> |
| | Signature | Print Title & Name | Date |